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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**
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14 **UNITED STATES OF AMERICA,**
15 **Plaintiff,**

16
17 **vs.**

18 **VO DUONG TRAN,**
19 **Defendant.**
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Case No.: CR 08-00197-DOC

ORDER RE: MOTION EMERGENCY
MOTION TO REDUCE SENTENCE
[402]

1 Before the Court is Defendant’s Emergency Motion to Reduce Sentence Pursuant to the
2 First Step Act (“Motion”) (Dkt. 402). For the reasons stated below, the Court **GRANTS**
3 Defendant’s Motion.

4 **I. Background**

5 A jury convicted defendant VO DUONG TRAN (“Defendant”) of the following
6 offenses: (1) conspiracy to commit a robbery affecting interstate commerce, in violation of 18
7 U.S.C. § 1951(a) (“the Hobbs Act”), (2) interstate travel and acquisition of a firearm with intent
8 to commit a robbery, in violation of 18 U.S.C. § 924(g); (3) possession of firearms in
9 furtherance of a “crime of violence,” namely, the Hobbs Act robbery conspiracy charged in
10 Count One and the § 924(g) offense charged in Count Two; and (4) possession of a machine
11 gun, in violation of 18 U.S.C. § 922(o)(1). The Court later vacated the conviction on Count 3
12 on the ground that the statute is unconstitutionally vague. Defendant was ultimately sentenced
13 to a 15-year sentence.

14 Defendant now moves for compassionate release because of concerns about his medical
15 condition—a lifelong asthma condition—and the spread of the novel coronavirus at FCI
16 Oakdale facility in Louisiana, where he is currently incarcerated. Because Defendant has
17 exhausted all possible avenues for administrative release, and otherwise qualifies for relief
18 pursuant to 18 U.S.C. § 3582(c), the Court **ORDERS** the immediate release of the Defendant
19 provided he self-quarantine at either a family home in San Gabriel, California or a family home
20 in Joliet, Illinois—two locations where family members have already offered to house the
21 Defendant—for at least 14 days.

22 Defendant moved for emergency relief on April 6, 2020 (Dkt. 402) (“Motion”). The
23 United States opposed on April 9, 2020 (Dkt. 403) (“Opp’n”). Defendant replied on April 10,
24 2020 (Dkt. 404) (“Reply”).

25 **A. Facts**

26 Defendant has suffered from asthma since childhood. Mot. at Exh. 4. Individuals with
27 asthma are at particular risk for severe Covid-19 illness. *Id.* at 6; *see also* People Who Are at
28 Higher Risk for Severe Illness, CDC (April 10, 2020) <https://www.cdc.gov/coronavirus/2019->

1 [ncov/need-extra-precautions/people-at-higher-risk.html](https://www.fbi.gov/ncov/need-extra-precautions/people-at-higher-risk.html). Defendant has not received an inhaler
2 from the BOP in approximately two weeks, and is in dire need of his medication. *Id.* at 7.
3 Defendant is housed at FCI Oakdale in Oakdale, Louisiana. *Id.* According to the BOP, FCI
4 Oakdale currently has 56 confirmed cases of Covid-19, including six deaths. *See* COVID-19,
5 Fed. Bureau of Prisons (April 10, 2020), <https://www.bop.gov/coronavirus/>. Defendant has
6 only 14 months remaining on his 15-year sentence, and argues that extraordinary and
7 compelling reasons warrant compassionate release given his medical condition and severe risk
8 if he is housed at FCI Oakdale during this pandemic. Mot. at 10.

9 On March 27, 2020, Defendant attempted to submit a request for release to his case
10 manager, who declined to accept it. Mot. at 11. On March 30, 2020, Defendant submitted his
11 request, and on April 2, 2020 Defendant spoke directly to Warden R. Myers and again
12 attempted to submit a further request. *Id.* The Warden declined to accept the request. *Id.* On
13 April 3, 2020 Defendant's original request was returned by jail staff, with no action having
14 been taken. *Id.*

15 **II. Legal Standard**

16 Under 18 U.S.C. § 3582, a court may modify a defendant's sentence upon motion of the
17 Director of the Bureau of Prisons or "upon motion of the defendant after the defendant has fully
18 exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion
19 on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the
20 warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A). Upon such
21 a motion, a court may modify a defendant's sentence after considering the factors set forth in
22 §3553(a) to the extent applicable if it finds that "extraordinary and compelling reasons warrant
23 such a reduction" and "such a reduction is consistent with applicable policy statements issued
24 by the Sentencing Commission." *Id.* § 3582(c)(1)(A)(i).

25 The policy statement regarding compassionate release sets forth three circumstances that
26 are considered "extraordinary and compelling reasons." U.S. Sentencing Guidelines, §
27 1B1.13(1)(A) & cmt. n.1. Among these are the "medical condition of the defendant," including
28 where the defendant is "suffering from a serious physical or medical condition . . . that

1 substantially diminishes the ability of the defendant to provide self-care within the environment
2 of a correctional facility and from which he or she is not expected to recover.” *Id.* § 1B1.13
3 cmt. 1. The policy statement also requires that the defendant not pose a danger to the safety of
4 the community. *Id.* § 1B1.13(2).

5 **III. Discussion**

6 As a preliminary matter, the Court finds that Defendant has exhausted all
7 administrative remedies under these circumstances. The Court agrees with the Defendant that
8 a refusal to accept a request for release, as Defendant has proffered occurred here, should not
9 “deprive him of judicial review.” Reply at 8. The Court finds that Defendant’s multiple
10 attempts to request release from the BOP, and the lack of action taken to adjudicate such a
11 request, is a constructive denial of his request. Therefore, Defendant has exhausted his
12 administrative remedies.

13 The Court is persuaded that Defendant presents an extraordinary and compelling
14 reason for compassionate release and that such release is consistent with applicable policy
15 considerations. The Court is aware of the current global health crisis caused by COVID-19.
16 The President has declared a National Emergency, and states and localities across the nation
17 have implemented measures to stymie the spread of the novel coronavirus. And while the
18 Court is aware of the measures taken by the BOP, news reports of the virus’s spread in
19 detention centers within the United States and beyond our borders demonstrate that
20 individuals housed within our prison systems nonetheless remain particularly vulnerable to
21 infection. *See, e.g.*, Danielle Ivory, “We Are Not a Hospital”: A Prison Braces for the
22 Coronavirus, N.Y. Times (March 17, 2020),
23 <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html> (citing densely
24 populated living conditions, dearth of soap, hand sanitizer, and protective gear, and
25 impossibility of maintaining safe distance between inmates and guards as reasons prisoners
26 are at particular risk of infection).

27 Indeed, at the prison Defendant is housed, six individuals have died after testing
28 positive for the virus and at least 56 other inmates and staff have tested positive. *See* COVID-

1 19, Fed. Bureau of Prisons (April 10, 2020), <https://www.bop.gov/coronavirus/>. In this case,
2 Defendant has been diagnosed with a serious medical condition that, according to reports
3 from the Center for Disease Control, make him particularly vulnerable to severe illness from
4 COVID-19. *See* People Who Are at Higher Risk for Severe Illness, CDC (April 10, 2020)
5 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html)
6 [risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html). Thus, the Court finds that Defendant has demonstrated an extraordinary and
7 compelling reason for compassionate release.

8 Moreover, the Court is persuaded that the applicable § 3553(a) factors support
9 Defendant's request for compassionate release and that Defendant will not pose a threat to the
10 community. While the Court acknowledges the seriousness of Defendant's offense,
11 Defendant has already served the vast majority of his sentence and has a criminal history
12 category of 1. The length of Defendant's incarceration adequately expresses the seriousness
13 of the offense, deters criminal conduct, and protects the public under § 3553(a). Because of
14 Defendant's serious medical condition and the length of time already served, the Court is
15 persuaded that Defendant will not pose a threat to the community.

16 Pursuant to 18 U.S.C. § 3582(c)(1)(A), the Court finds that extraordinary and
17 compelling reasons warrant a reduction of Defendant's sentence, that Defendant does not
18 pose a danger to any other person or the community, that the § 3553(a) factors support a
19 reduction, and that the reduction is consistent with currently applicable Sentencing
20 Commission policy statements.

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DATED: April 10, 2020

DAVID O. CARTER
UNITED STATES DISTRICT JUDGE